## In re: Objection to Issuance of Variance FT-6425 From 326 IAC 4-1 Mill Township Volunteer Fire Department, Grant County, Indiana 2004 OEA 4 (03-A-J-3163)

## **TOPICS**:

variance burn fire training motion to dismiss moot

## **PRESIDING JUDGE**:

Davidsen

# **PARTY REPRESENTATIVES:**

Permittee: Joseph W. Hewitt, Assistant Chief, Mill Township Volunteer Fire Department

Petitioner: Pamela Sharp Meyer, Esq., Beasley & Gilkison, LLP

IDEM: Jacquelyn F. Moore, Esq.

#### **ORDER ISSUED**:

March 3, 2004

## **INDEX CATEGORY**:

Air

#### **FURTHER CASE ACTIVITY:**

[none]

## In re: Objection to Issuance of Variance FT-6425 From 326 IAC 4-1 Mill Township Volunteer Fire Department, Grant County, Indiana 2004 OEA 4 (03-A-J-3163)

- ,	IE INDIANA OFFICE OF IENTAL ADJUDICATION
COUNTY OF MARION )	ENTAL ADJUDICATION
IN THE MATTER OF:	)
OBJECTION TO THE ISSUANCE OF	) CAUSE NO. 03-A-J-3163
VARIANCE FT-6425 FROM 326 IAC 4-1	)
MILL TOWNSHIP VOLUNTEER FIRE DEPT.	)
GRANT COUNTY INDIANA	)

# FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER GRANTING MOTION TO DISMISS PETITION FOR ADMINISTRATIVE REVIEW

Please be notified that Office of Environmental Adjudication ("OEA" or "Court") Cause No. 03-A-J-3163 is hereby dismissed from the OEA pursuant to the final dismissal of the petitioners for review of this action under Ind Tr. R. 12(b)(6) and 315 IAC 1, for failure to state a claim upon which relief can be granted. The Environmental Law Judge hereby makes the following findings of fact and conclusions of law:

#### **Findings of Fact**

- 1. On August 19, 2003, the Indiana Department of Environmental Management ("IDEM") mailed its approval of Variance FT-6425 from 326 IAC 4-1, approving the Mill Township Volunteer Fire Department ("Permittee") to burn a residential structure at 4740 East 600 South, Marion, Grant County, Indiana, for fire training, which approval is the subject matter of this case. The document containing approval further states that the approval expires on December 31, 2003.
- 2. On August 27, 2003, counsel for Jane Alene Jones, Personal Representative of the Estate of Geraldine LaFrance Ruley, filed a Petition for Administrative Review ("Petition"). In the Petition, Ms. Jones requested a determination of the Permittee's financial responsibility and insurance coverage.
- 3. On September 4, 2003, the OEA ordered the Petition for Administrative Review set for Prehearing Conference on September 24, 2003, which Prehearing Conference was conducted as scheduled.
- 4. On March 1, 2004, the Indiana Department of Environmental Management, ("IDEM"), by counsel, filed a Motion to Dismiss the above-captioned matter, asserting that the matter was now moot as the issued permit had expired on December 31, 2003.

#### **Conclusions of Law**

1. The Office of Environmental Adjudication ("OEA") has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management ("IDEM") and the parties to this controversy pursuant to Ind. Code § 4-21.5-7, et seq.

## In re: Objection to Issuance of Variance FT-6425 From 326 IAC 4-1 Mill Township Volunteer Fire Department, Grant County, Indiana 2004 OEA 4 (03-A-J-3163)

- 2. This is a Final Order issued pursuant to Ind. Code § 4-21.4-3-27. Findings of Fact that may be construed as Conclusions of Law and Conclusions of Law that may be construed as Findings of Fact are so deemed.
- 3. "When a dispositive issue in a case has been resolved in such as way as to render it unnecessary to decide the question involved, the case will be dismissed." Travelers Indem. Co. v. P.R. Mallory & Co., 772 NE.2d 479, 484 (Ind. App. 2002). A case is deemed moot when there is no effective relief that can be rendered to the parties by the Court. A.D. v. State, 736 N.E.2d 1274, 1276 (Ind. App. 2000). In this case, expiration of the permit has eliminated the matter in controversy, and has effectively resolved the case. The Court has no relief available to grant after the permit has expired. Ms. Jones' Petition for Administrative Review must therefore be dismissed.

## Final Order

IT IS THEREFORE ORDERED that the Petition for Administrative Review filed by Petitioner Jane Alene Jones, Personal Representative of the Estate of Geraldine LaFrance Ruley is hereby dismissed as the cause is now moot; the permit in controversy has expired and is no longer in effect.

You are hereby further notified that pursuant to provisions of Indiana Code § 4-21.5-7.5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of IC 4-21.5. Pursuant to IC 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 3rd day of March, 2004 in Indianapolis, IN.

Hon. Mary L. Davidsen Chief Environmental Law Judge